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Administrative Appeal Decision - Moore, Jerry Jr. (2018-12-28)

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STATE OF NEW YORK – BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: MOORE, JERRY JR

Facility: Auburn Correctional Facility

NYSID No [REDACTED]

Appeal Control #: 07-075-18 B

Dept. DIN#: 16B3619

Appearances:

For the Board, the Appeals Unit

For Appellant:

Jerry Moore (16B3619)
Auburn Correctional Facility
135 State Street, P.O. Box 618
Auburn, New York 13021

Board Member(s) who participated in appealed from decision: Coppola, Davis.

Decision appealed from: 6/2018 Denial of Discretionary Release; 12-month hold.

Pleadings considered:

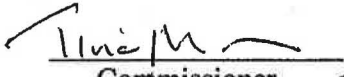


Brief on behalf of the Appellant submitted on: October 12, 2018.

Statement of the Appeals Unit's Findings and Recommendation.

Documents relied upon:

Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 12/28/18.
LB

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: MOORE, JERRY JR

Dept. DIN#: 16B3619

Page: 1

Facility: Auburn Correctional Facility

Appeal Control #: 07-075-18 B

Appellant raises various issues in the brief he submitted in support of the administrative appeal he initiated following the Board of Parole's decision to deny his immediate release to community supervision following an interview held on or about October 12, 2018. The Appeals Unit has reviewed each of the issues raised by Appellant and finds that the issues have no merit.

The issues raised by Appellant in his brief are as follows: (1) the Board should not be permitted to discuss during the interview information contained in the pre-sentence investigation report; (2) the Board may not consider Appellant's criminal history when assessing the suitability of his possible release back into the community; and (3) one of the Commissioners "cut-off" discussion of his future plans during the interview.

As to the first issue, pursuant to both statutory and regulatory requirements, the Board must consider Appellant's pre-sentence investigation report when assessing his suitability for possible release back into the community. See Executive Law §259-i(2)(c)(A)(vii); 9 N.Y.C.R.R. §8002.2(d)(7). Also, because Appellant did not timely challenge the information contained in the pre-sentence investigation report before the sentencing court, he is precluded from asserting that the Board was not entitled to rely upon the information contained therein. Sutherland v. Alexander, 64 A.D.3d 1028 (3d Dept. 2009); Matter of Champion v. Dennison, 40 AD3d 1181 (2007), leave dismissed, 9 NY3d 913 (2007); Matter of Cox v. New York State Div. of Parole, 11 AD3d 766 (2004), leave denied, 4 NY3d 703 (2005).

As to the second issue, the Board must consider Appellant's prior criminal record when assessing his suitability for possible release back into the community. See Executive Law §259-i(2)(c)(A)(viii); 9 N.Y.C.R.R. §8002.2(d)(8).

As to the third issue, the claim that he was "cut-off" during the Board interview while discussing his future goals (he provides a specific page and line reference from the interview transcript), a review of the transcript does not support this allegation. Furthermore, it is noted that Appellant continued discussing his future goals as the interview continued past his specific point of reference.

Recommendation:

It is the recommendation of the Appeals Unit that the Board's decision be affirmed.